

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Licensing and Certification
11 State House Station
41 Anthony Avenue
Augusta, Maine 04333-0011
Tel.: (207) 287-9300; Toll Free: (800) 791-4080
TTY: Dial 711 (Maine Relay); Fax: (207) 287-5815

Date: November 17, 2021

To: Hospitals and Critical Access Hospitals (CAH)

From: Bill Montejo, RN, Director, Division of Licensing and Certification

Re: Clarification on Acute Care Hospital Transfers to Critical Access Hospitals

Purpose

The purpose of this memorandum is to clarify the option for Acute Care Hospitals to transfer skilled nursing and nursing level of care patients to Critical Access Hospitals (CAHs) during the ongoing Public Health Emergency (PHE). Acute care hospitals that are at or exceeding inpatient capacity can consider transferring to CAH patients who no longer require acute hospital care, but still require nursing and/or other care assistance and are unable to be discharged due to nursing facilities not accepting new inpatient admissions.

Federal Guidance-Appendix W of the CMS State Operations Manual

Special Requirements for CAH Providers of Long-Term Care Services ("Swing-Beds") at 42 CFR § 485.645 indicates that swing bed services are for admissions of patients who no longer need hospital level of care but do still need skilled nursing level of care.

CAHs should not be admitting directly into their swing bed program nursing home patients who do not need skilled level of care. During the PHE, however, a CAH may accept a transfer of a non-skilled level of care patient from an Acute Care Hospital, provided the transfer is being done to facilitate creating capacity at the Acute Care Hospital due, in some part, to increases in COVID-19 patients at the Acute Care Hospital. The receiving CAH will continue to work with the patient and patient's family on finding a skilled nursing facility, nursing facility, or other suitable placement for the patient. This is permissible within the Centers for Medicare & Medicaid Services (CMS) Interpretive Guidelines at § 485.645, which states:

"The intended use for swing beds is for a transitional time period to allow the patient to fully recover to return home or while awaiting placement into a nursing facility. The CAH should document in the patient's medical record efforts made for nursing facility placement."

Note that CMS has issued a blanket waiver of the CAH 96-hour average length of stay requirement as part of the CMS 1135 blanket waivers. Thus, a CAH can have an extended stay inpatient without concern for meeting an average length of stay requirement.

If there are questions regarding this guidance please reach out to Lynn Hadyniak, Assistant Director of Medical Facilities (Lynn.Hadyniak@maine.gov) or myself.